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16 *INC., dba EARTH FRIENDLY PRODUCTS*

17  
18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 REBEKAH BAHARESTAN and JENA  
21 MCINTYRE, on behalf of themselves and all  
others similarly situated,

22 Plaintiffs,

23  
24 v.

25 VENUS LABORATORIES, INC., dba EARTH  
FRIENDLY PRODUCTS, INC.,

26 Defendant.  
27  
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Case No. 3:15-cv-03578-EDL

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT;  
[PROPOSED] ORDER**

Date: November 3, 2015  
Time: 9:00 a.m.  
Dept. Courtroom E  
Judge: Hon. Elizabeth D. Laporte

Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 16-9, and the Standing Order for all Judges in the Northern District of California – Contents of a Joint Case Management Statement, plaintiffs Rebekah Baharestan and Jena McIntyre (collectively, “Plaintiffs”) and defendant Venus Laboratories, Inc., d/b/a Earth Friendly Products (“Defendant”) (collectively, the “Parties”) hereby submit this Joint Case Management Conference Statement in advance of the initial Case Management Conference (“CMC”) set for November 3, 2015, in the above-captioned action. In addition, the Parties have moved for preliminary approval of a class action settlement which, if finally approved, will fully resolve the entire action. Accordingly, the parties respectfully request that, in the interest of judicial efficiency, all litigation and case management deadlines be stayed pending the outcome of the settlement approval process.

**A. Jurisdiction and Service**

On August 4, 2015, Plaintiffs on behalf of themselves and all other similarly situated persons, filed their Complaint for this action in the United States District Court, Northern District of California, in the San Francisco Division. The Court has original subject-matter jurisdiction over this action pursuant to 28 United State Code (“U.S.C.”) § 1332(d). There are no issues regarding personal jurisdiction or venue. Plaintiffs have completed service as to the only defendant named in this action, Venus Laboratories, Inc.

**B. Facts and Legal Issues**

This class action concerns Defendant’s allegedly false and misleading marketing, advertising, and labeling of its Earth Friendly brand household cleaning products (“Earth Friendly Products” or “Products”) as natural, derived from plants, free from harmful chemicals, and/or gentle. Plaintiffs allege that despite Defendant’s representations, the Earth Friendly Products are in fact composed of certain ingredients that are processed, synthetic, and not natural. For example, many of the Earth Friendly Products include Methylisothiazolinone (“MIT”) – a chemical that Plaintiffs allege is both synthetic and a severe allergen for a large percentage of people. Plaintiffs seek to represent a class of persons throughout the United States who, like themselves, purchased the Products under the erroneous belief that the Products were natural based on Defendants representations. The primary goals of Plaintiffs’ case are to: (1) halt

1 Defendant's allegedly deceptive marketing, advertising, and labeling of the Products as natural,  
 2 thereby protecting future consumers; (2) require Defendant to remove MIT as an ingredient or  
 3 disclose that MIT can cause significant skin problems; and (3) disgorge any premiums Defendant  
 4 obtained as a result of its alleged misrepresentations, thereby compensating consumers for past  
 5 wrongdoings.

6 Plaintiffs' Complaint seeks relief on behalf of a proposed nationwide Class of purchasers  
 7 of the Products pursuant to the express warranty laws of all states and the District of Columbia.  
 8 The Complaint also seeks relief on behalf of two proposed Sub-Classes – one of California  
 9 purchasers and one of Washington purchasers – pursuant to the consumer protection and false  
 10 advertising laws of those states. *See* Cal. Civ. Code § 1750, *et seq.*; Cal. Bus. & Prof. Code §  
 11 17200, *et seq.*; Cal. Bus. & Prof. Code §§ 17580-17581; and Wash. Rev. Code § 19.86, *et seq.*  
 12 Finally, the Complaint seeks relief on behalf of the California Sub-Class for Defendant's alleged  
 13 violations of the California Organic Products Act's ("COPA") restrictions on selling, labeling, or  
 14 representing cosmetic products as organic or made with organic ingredients unless the products  
 15 contain a minimum of 70 percent organically produced ingredients. *See* Cal. Health & Safety  
 16 Code § 110810, *et seq.*

17 The Parties have engaged in lengthy and comprehensive settlement discussions, which  
 18 culminated in reaching a settlement that accomplishes Plaintiffs' primary goals for this case.<sup>1</sup> If  
 19 approved, the settlement will remedy Defendant's alleged misconduct and compensate the  
 20 proposed class for a significant portion of their alleged damages. In exchange for a release of  
 21 Plaintiffs' and the class' claims, Defendant has agreed to undertake several remedial measures,  
 22 including modifying its labels and website, changing one ingredient, along with providing the  
 23 monetary compensation pursuant to the terms of the settlement.

#### 24 **C. Motions**

25 On September 29, 2015, Plaintiffs submitted a motion for preliminary approval of the

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 27 <sup>1</sup> Although the action was filed in August of this year, each of the plaintiffs independently  
 28 served Defendant with a pre-suit demand nine and six months prior to filing the complaint. The  
 Parties spent the intervening months exchanging informal discovery and negotiating the settlement  
 which is now before the Court.

1 proposed settlement. This motion will be heard by the Court on the same day at the same time as  
2 the present CMC.

3 **D. Amendment of Pleadings**

4 The Parties do not anticipate adding or dismissing any parties, claims, or defenses in this  
5 case.

6 **E. Evidence Preservation**

7 The Parties have taken appropriate steps to ensure the preservation of all information,  
8 documents, and tangible items that are relevant to Plaintiffs' claims in this action.

9 **F. Disclosures**

10 The Parties have not exchanged their initial disclosures pursuant to Federal Rules of Civil  
11 Procedure (F.R.C.P.'') Rule 26(a). However, the Parties have informally exchanged extensive  
12 information to further their settlement negotiations. The Parties request postponing their formal  
13 exchange of initial disclosures until after the Court rules on Plaintiffs' preliminary settlement  
14 approval motion.

15 **G. Discovery**

16 As discussed above and in Plaintiffs' memorandum of points and authorities in support of  
17 their motion for preliminary approval of the settlement, the Parties have informally exchanged  
18 extensive information to further their settlement negotiations. Due to the pending preliminary  
19 settlement approval motion, the Parties request delaying discussions regarding a discovery plan.  
20 There are no discovery disputes at this time.

21 **H. Class Action**

22 Pursuant to Rule 23 of the F.R.C.P., Plaintiffs bring this case as a class action on behalf of  
23 Plaintiffs and the proposed class which is defined as follows:

24 All United States residents who purchased the Products within the United  
25 States during the period from January 23, 2011 through the date of the  
26 Preliminary Approval Order. Excluded from the Nationwide Class are any  
27 of Defendant's officers, directors, or employees; officers, directors, or  
28 employees of any entity in which Defendant currently has or has had a  
controlling interest; and Defendant's legal representatives, heirs,  
successors, and assigns.

(the “Class”). There are also two proposed sub-classes in this case. Plaintiff Baharestan brings this action pursuant to Rule 23 on behalf of herself and all other similarly situated Californians (the “California Sub-Class”), defined as follows:

All persons who purchased the Products within the state of California during the period from January 23, 2011 through the date of the Preliminary Approval Order. Excluded from the Nationwide Class are any of Defendant’s officers, directors, or employees; officers, directors, or employees of any entity in which Defendant currently has or has had a controlling interest; and Defendant’s legal representatives, heirs, successors, and assigns.

Plaintiff McIntyre brings this action pursuant to Rule 23 on behalf of herself and all other similarly situated Washington residents (the “Washington Sub-Class”), defined as follows:

All persons who purchased the Products within the state of Washington during the period from January 23, 2011 through the date of the Preliminary Approval Order. Excluded from the Nationwide Class are any of Defendant’s officers, directors, or employees; officers, directors, or employees of any entity in which Defendant currently has or has had a controlling interest; and Defendant’s legal representatives, heirs, successors, and assigns.

As further described in the Complaint and Plaintiffs’ memorandum of points and authorities in support of their motion for preliminary approval of the settlement, the criteria for class certification under Rule 23(a) are satisfied. Class certification is also appropriate under Rule 23(b)(2) and (b)(3) of the F.R.C.P. In the pending preliminary approval motion, the Parties request that the Court provisionally certify the class.

#### **I. Related Cases**

On August 31, 2015, Plaintiff Angela Barnes, on behalf of herself and all other similarly situated parties in Illinois, filed a similar class action complaint against Defendant in the Illinois Circuit Court of St. Clair County, *Barnes v. Venus Laboratories, Inc.*, Case No. 15-L-491. This complaint focuses on Plaintiff Angela Barnes state law claims regarding Defendant’s alleged false and deceptive advertising of its ECOS brand laundry detergents as natural. There is also a case pending in Suffolk County, Massachusetts, *Smith v. Earth Friendly Products*, Case No. SUCV2013-03342-BLS1, seeking to assert similar claims on behalf of a class of Massachusetts

1 purchasers of Dishmate brand dish soap products.

2 **J. Relief**

3 As a result of Defendant's alleged violations, Plaintiffs seek relief in the form of the terms  
4 agreed to in the proposed settlement. These settlement terms are described at length in Plaintiffs'  
5 memorandum of points and authorities in support of their motion for preliminary approval of the  
6 settlement.

7 **K. Settlement and ADR**

8 The Parties already engaged in a full-day mediation with the Honorable Morton Denlow  
9 (Ret.) in Chicago, Illinois on June 1, 2015. The mediation resulted in the principle terms of the  
10 settlement that is before the Court for preliminary approval.

11 **L. Consent to Magistrate Judge for all Purposes**

12 The parties consent to have a magistrate judge conduct all further proceedings in this case.

13 **M. Other References**

14 This case is not suitable for reference to binding arbitration, a special master, or the  
15 Judicial Panel on Multidistrict Litigation at this time.

16 **N. Narrowing of Issues, Expedited Trial Procedure, Scheduling, and Trial**

17 The Parties request that the Court defer any discussions regarding trial until a later date due  
18 to the pending settlement.

19 **O. Disclosure of Non-Party Interested Entities or Persons**

20 The Parties have each filed their respective Certification of Interested Parties in accordance  
21 with Civil Local Rule 3-15.

22 **S. Professional Conduct**

23 All attorneys of record have reviewed the Guidelines for Professional Conduct for the  
24 Northern District of California.

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Dated: October 27, 2015

Respectfully submitted,  
LEXINGTON LAW GROUP

/s/ Mark N. Todzo  
Mark N. Todzo  
Attorneys for Plaintiffs REBEKAH BAHARESTAN  
and JENA MCINTYRE

Dated: October 27, 2015

HALUNEN LAW

/s/ Melissa W. Wolchansky  
Melissa W. Wolchansky  
Attorneys for Plaintiffs REBEKAH BAHARESTAN  
and JENA MCINTYRE

Dated: October 27, 2015

DRINKER BIDDLE & REATH LLP

/s/ Daniel J. Delaney  
Daniel J. Delaney  
Attorneys for Defendant VENUS LABORATORIES,  
INC., dba EARTH FRIENDLY PRODUCTS, INC.

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**CASE MANAGEMENT ORDER**

Having reviewed the Case Management Statement of the Parties and good cause appearing, the Court hereby withholds from setting any litigation and/or case management deadlines pending the outcome of the settlement approval process.

**SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Elizabeth D. Laporte  
United States Magistrate Judge